

Estate of Roger Owensby vs. City of Cinti.
October 17, 2003

PATRICK E. CATON

1

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF OHIO

WESTERN DIVISION

ESTATE OF ROGER D. :
OWENSBY JR., et al., :
 :
Plaintiffs, :
vs. : Case No. 01-CV-769
 : (Judge S. A. Spiegel)
CITY OF CINCINNATI, :
et al., :
 :
Defendants. :

Videotaped deposition of PATRICK EDMUND

CATON, a defendant herein, called by the plaintiffs
for cross-examination, pursuant to the Federal Rules
of Civil Procedure, taken before me, Wendy Davies
Welsh, a Registered Diplomate Reporter and Notary
Public in and for the State of Ohio, at the offices
of Helmer, Martins & Morgan Co. LPA, 1900 Fourth &
Walnut Centre, 105 East Fourth Street, Cincinnati,
Ohio, on Friday, October 17, 2003, at a.m.

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<p>1 APPEARANCES:</p> <p>2 On behalf of the Plaintiffs:</p> <p>3 Paul B. Martins, Esq. 4 Don Stiens, Esq. 5 Frederick M. Morgan, Jr. Esq. 6 Helmer, Martins & Morgan Co. LPA 7 Suite 1900, Fourth & Walnut Centre 8 105 East Fourth Street 9 Cincinnati, Ohio 45202 10 Phone: (513) 421-2400</p> <p>11 John J. Helbling, Esq. 12 The Helbling Law Firm, L.L.C. 13 3672 Springdale Road 14 Cincinnati, Ohio 45251 15 Phone: (513) 923-9740</p> <p>16 On behalf of the Defendants City of Golf Manor, 17 Stephen Tilley, Roby Heiland and Chris 18 Campbell:</p> <p>19 Lynne Marie Longtin, Esq. 20 Rendigs, Fry, Kieley & Dennis 21 900 Fourth & Vine Tower 22 One West Fourth Street 23 Cincinnati, Ohio 45202-3688 24 Phone: (513) 381-9200</p> <p>On behalf of Defendants City of Cincinnati, Darren Sellers, Jason Hodge:</p> <p>Gerl Hernandez Geller, Esq. Assistant City Solicitor and Julie F. Bissinger, Esq. Chief Counsel Department of Law Room 214, City Hall 801 Plum Street Cincinnati, Ohio 45202 Phone: (513) 352-3346</p>	<p>1 S T I P U L A T I O N S</p> <p>2 It is stipulated by and among counsel for the</p> <p>3 respective parties that the deposition of PATRICK</p> <p>4 EDMUND CATON, a defendant herein, called by the</p> <p>5 plaintiffs for cross-examination, pursuant to the</p> <p>6 Federal Rules of Civil Procedure, may be taken at</p> <p>7 this time by the notary; that said deposition may be</p> <p>8 reduced to writing in stenotype by the notary, whose</p> <p>9 notes may then be transcribed out of the presence of</p> <p>10 the witness; and that proof of the official</p> <p>11 character and qualifications of the notary is</p> <p>12 expressly waived.</p> <p>13 - - -</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>
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<p>1 APPEARANCES (Continued):</p> <p>2 On behalf of the Defendants Robert B. Jorg, 3 Patrick Caton, Jason Hodge, Victor Spellman and 4 Darren Sellers:</p> <p>5 Donald E. Hardin, Esq. 6 Hardin, Lefton, Lazarus & Marks, LLC 7 915 Cincinnati Club Building 8 30 West Garfield Place 9 Cincinnati, Ohio 45202 10 Phone: (513) 721-7300</p> <p>11 Also present:</p> <p>12 Richard W. Grubb, Videographer</p> <p>13 Lisa Damstrom, Law Clerk</p> <p>14 Helmer, Martins & Morgan Co., L.P.A.</p> <p>15 Wendy M. Weller, Paralegal</p> <p>16 Buckley, King & Bluso</p> <p>17 Mr. Roger Owensby</p> <p>18 Mrs. Brenda Owensby</p> <p>19 Mr. Shawn Owensby</p> <p>20 Victor N. Spellman</p> <p>21 - - -</p> <p>22</p> <p>23</p> <p>24</p>	<p>1 I N D E X</p> <p>2 Examination by: Page</p> <p>3 Mr. Martins 6</p> <p>4 Ms. Longtin 232</p> <p>5 Mr. Martins. 238</p> <p>6 - - -</p> <p>7</p> <p>8 E X H I B I T S</p> <p>9 Deposition Exhibit 28 Page</p> <p>10 Deposition Exhibit 29 22</p> <p>11 Deposition Exhibit 30 30</p> <p>12 Deposition Exhibit 31 43</p> <p>13 Deposition Exhibit 32 65</p> <p>14 Deposition Exhibit 33 115</p> <p>15 Deposition Exhibit 34 186</p> <p>16 Deposition Exhibit 35 191</p> <p>17 Deposition Exhibit 36 194</p> <p>18 Deposition Exhibit 36 207</p> <p>19 - - -</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>

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1 He said, "Yeah."
2 We gloved up, and Sergeant Watts said,
3 "Get him out of the car." And Officer Hasse and I
4 removed him from the car.
5 Q. Is that the first time you realized that
6 Roger Owensby was injured?
7 A. That's correct.
8 Q. Well, you knew before you placed him in
9 the car that he had been Maced, right?
10 A. That's correct.
11 Q. And isn't it true that the standard for
12 care of someone who has been Maced is to provide
13 them with water and fresh air?
14 A. That is correct.
15 Q. And that was not provided?
16 A. I wouldn't consider that an injury.
17 Q. What do you consider someone having been
18 Maced?
19 A. An irri-- it's an irritation. It's a
20 device used to irritate and cause pain. It doesn't
21 cause injury.
22 Q. Okay. Well, in any event, you knew that
23 he had been Maced, you knew that the standards were
24 to provide water and fresh air, and you knew that

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1 water and fresh air were not provided, correct?
2 A. Well, it -- they're supposed to be
3 provided after the scene is stabilized. And the
4 scene, in my opinion, was never stabilized.
5 Q. At the time you placed Roger Owensby in
6 the back seat of the Golf Manor cruiser with the
7 windows up, he had not been provided with water or
8 fresh air, correct?
9 A. I thought there was plenty of fresh air
10 inside the cruiser.
11 Q. Had you provided him with water?
12 A. No, I had not.
13 Q. And when you placed him or walked him
14 toward the cruiser, you knew that he had several
15 lacerations on his face?
16 A. No, I did not.
17 Q. How far away were you from Mr. Owensby's
18 face as you escorted him to the cruiser?
19 A. I would put us at shoulder distance -- we
20 were shoulder to shoulder essentially, as I walked
21 him towards the cruiser.
22 Q. And while you were doing this, as I
23 understand your prior testimony, you were commanding
24 him to put his feet down, right?

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1 A. That's correct.
2 Q. And when you were doing that, were you
3 looking at him?
4 A. At his feet.
5 Q. Not at his face?
6 A. No.
7 Q. When you put him into the cruiser, as I
8 understand it, Officer Sellers put him in the
9 cruiser from the rear passenger door and you went
10 around to the driver passenger door and crawled in,
11 grabbed him by the shoulders and pulled him toward
12 you; is that right?
13 A. Well, that's a much shortened version of
14 it, but that's essentially correct.
15 Q. And when you pulled Mr. Owensby into the
16 cruiser toward you, weren't you face to face with
17 him?
18 A. No, I wouldn't say face to face. My head
19 was ducked and it was very dark inside the cruiser.
20 Mr. Owensby was a little more than a shadow to me at
21 that point.
22 Q. The cruiser was parked next to a gas
23 island?
24 A. That's correct.

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1 Q. And the gas island is illuminated by six
2 halogen lamps, correct?
3 A. That is correct.
4 Q. And the cruiser itself had its lights on?
5 A. I don't know if the lights were on or off.
6 They weren't -- the interior lights were not on.
7 Q. There was no dome light on; is that what
8 you're saying?
9 A. That's correct.
10 Q. But there were lights from the -- from the
11 top of the car that were on?
12 A. I don't recall if there were lights on or
13 off on top of the cruiser.
14 MR. MARTINS: Let me have the tape.
15 Q. I'm going to show you -- I'm going to show
16 you, sir, what has previously been marked as
17 Exhibit 20. This is the video of -- from Officer
18 Spellen's car.
19 (Videotaped played.)
20 Q. I'm pausing it here. You can see the gas
21 island with the halogen lamps at the top, correct?
22 A. That's correct, about 20 feet away.
23 Q. Well, we're not up to the car yet.
24 A. No.

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<p style="text-align: right;">Page 110</p> <p>1 towards the middle of his back and I wasn't moving. 2 It simply wasn't moving. And, because I didn't 3 already smell it, I figured Mace wasn't employed at 4 this point. And I screamed, "Mace this guy," and 5 nothing happened. And I screamed again, "Somebody 6 Mace this guy," and nothing happened. 7 And I looked up and I saw David Hunter on 8 one knee near the head of Roger Owensby, and the 9 best way I can describe it is he had like a deer 10 caught in the headlights look on his face and he's 11 looking at Roger Owensby's face. 12 Officer Jorg at this point is laying at an 13 angle across Owen-- I guess it would be Owensby's 14 left shoulder. 15 Q. Where's Officer Jorg's head? 16 A. Up near Owensby's head. 17 Q. Okay. 18 A. And I looked at Officer Hunter and I 19 bellowed at the top of my lungs, "Mace this mother 20 fucker." The intent was to shock him into action. 21 Q. Okay. 22 A. At which point he snapped, went to his 23 Mace canister and started to pull it out. And I -- 24 my -- I dropped my attention back to the handcuff.</p>	<p style="text-align: right;">Page 112</p> <p>1 Q. Continue. 2 A. Officer Jorg starts bringing his left arm 3 back. At this point I screamed, "Stop resisting, 4 stop resisting, stop resisting," and -- and 5 delivered three more blows to the forearm. 6 His arm is starting to bend a little bit, 7 but it's not getting into a position where I can get 8 his right hand close enough to his left hand to 9 handcuff it, and I deliver three more blows along 10 the forearm, around the ar-- elbow, above the elbow 11 area. It's now coming back closer to his back and 12 his arm starts to bend a little bit more. 13 And we're still in a struggle. I can see 14 now Owensby's left hand coming back to me. I can 15 see the right hand's getting there, but it's still a 16 matter of -- it's a battle for inches now to try and 17 get his left hand into his -- into the left cuff. 18 At some point out of the corner of my eye 19 I see a PR-24 introduced to the right arm. The 20 right arm suddenly levers to the left. The left arm 21 goes into the cuff. We close the cuffs. 22 Q. As to the PR-24, how was it used? 23 A. As -- as a lever tool. As a tool to lever 24 his arm back.</p>
<p style="text-align: right;">Page 111</p> <p>1 And I started working it behind his back as best as 2 I could. 3 I know the Mace was employed at that 4 point. 5 Q. Because you could smell it? 6 A. I could smell it. I can only assume Dave 7 Hunter Maced him. I delivered three strikes -- 8 well, at -- at this point Officer Jorg is becoming 9 successful with getting the left hand out from 10 behind Owensby, which I -- I believe he was digging 11 for it. 12 Q. When you looked up toward Officer Hunter, 13 did you notice whether or not Officer Jorg had his 14 arm around Mr. Owensby's head? 15 A. At that point I don't know. 16 Q. You just don't know one way or the other? 17 A. All I -- 18 Q. He -- 19 A. All I could see was -- I don't know one 20 way or another. All I could see is Owens-- Officer 21 Jorg's back at that point. 22 Q. So you couldn't even see Mr. Owensby's 23 head? 24 A. I -- I really don't recall.</p>	<p style="text-align: right;">Page 113</p> <p>1 Q. Was it placed under the arm? 2 A. I -- I would guess it was. I wasn't 3 looking at the PR-24. All I know is I saw the 4 glimpse of the PR-24 and all of a sudden his right 5 arm came across his body. 6 Q. Do you know who was using the PR-24? 7 A. I can only assume Officer Hodge was. And 8 I've been yelled at, don't assume anything in the 9 his interview, but when I -- when we all stood up, 10 Officer Hodge was holding a PR-24, so... 11 Q. Have you received training on the use of a 12 PR-24 to get a suspect's arm behind his back? 13 A. Yes. 14 Q. And how do you -- according to your 15 training, how do you use the PR-24? 16 A. In -- in this case? In this -- 17 Q. In this kind of scenario. 18 A. In this kind of scenario I -- I would 19 place -- I would place the PR-24 at an angle 20 underneath his arm and just kind of lever it. 21 That's what I would do in that -- in that case. 22 (Discussion off the stenographic record.) 23 Q. I don't have a PR-24, but I do have a 24 little bat. Can you show me how you would use -- if</p>

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17:00:39 1 MR. HARDIN: Caton.

17:00:39 2 VIDEOGRAPHER: Sorry. Mr. Caton, you have
17:00:39 3 a right to review this videotape deposition
17:00:39 4 prior to its being shown to a court or jury.
17:00:39 5 Will you waive that right?

17:00:39 6 THE WITNESS: No.

17:00:40 7 VIDEOGRAPHER: We're off the record. The
17:00:42 8 time showing is 5:04 p.m.

17:00:42 9 MR. MARTINS: I take it you also want
17:00:49 10 signature on the deposition?

17:00:51 11 MR. HARDIN: Yes. Yes.

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PATRICK EDMUND CATON

(Deposition concluded.)